

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

**PEOPLE OF THE STATE OF ILLINOIS,)**

**Complainant )**

**v. )**

**PCB NO. 12-35**

**(Enforcement – Water)**

**SIX-M CORPORATION, INC., and )**

**WILLIAM MAXWELL, and )**

**Respondents. )**

**NOTICE OF FILING AND PROOF OF SERVICE**

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, RESPONDENTS' OPPOSITION TO COMPLAINANT'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT, a copy of which is herewith served upon you.

The undersigned hereby certifies that a true and correct copy of this Notice and attached document were served upon the above counsel of record to this cause by electronic mail on July 16, 2018, before 5:00 p.m. The total number of pages in the transmission is 7.

SIX M. CORPORATION, INC. and WILLIAM  
MAXWELL, respondents,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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**PEOPLE OF THE STATE OF ILLINOIS,)**  
                  **Complainant,                  )**  
                  **v.  )**      **PCB NO. 12-35**  
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**WILLIAM MAXWELL,                      )**  
                  **Respondents.                  )**

**RESPONDENTS’ OPPOSITION TO MOTION TO REOPEN DISCOVERY**

NOW COME Respondents, by their undersigned counsel, pursuant to Section 101.500 of the Board’s Procedural Rules (35 Ill. Admin. Code §101.500), in opposition to Complainant’s Motion for Leave to File First Amended Complaint, stating as follows:

1. The death of William Maxwell provides no justification for doing anything other than dismissing Mr. Maxwell from this lawsuit, and in particular no justification to add parties, change the allegations, and add new legal theories.

2. The Complaint herein alleges that William and Marilyn Maxwell have at all relevant times owned and operated the subject gasoline service station. (Complaint, ¶ 6) The Complaint further alleges throughout that they, as “Respondents,” were involved in all material aspects of the issues. (Complaint, ¶19, ¶ 20, ¶ 21, ¶ 23, ¶ 25, ¶ 26, ¶ 27, ¶ 28, ¶ 29, ¶ 32, ¶ 33, and ¶ 34) The Complainant also claims that William and Marilyn Maxwell were given notice and the opportunity to meet with the Illinois EPA. (Complaint, ¶ 3)

3. In short, “the complaint alleges that William Maxwell is personally responsible for failure to take corrective action.” (Board Order of Nov. 17, 2011 (denying motion to dismiss complaint after dismissing Marilyn Maxwell by consent due to her death))

4. While Respondents repeatedly challenged William Maxwell being in this case, these objections were both challenged by the Complainant, and rejected by the Board in reliance upon the allegations and arguments of the Complainant.

5. In particular, the affidavit of Thomas Maxwell was originally filed in support of a motion to dismiss William Maxwell in 2011 and easily could have been offered as justification for a motion to amend the pleading in 2011. Instead, Complainant held to the story that William Maxwell “owned and operated” the facility, and the operative time period of the complaint began in 1986 and would be unaffected by his subsequent retirement. (Resp. Mot. Dismiss, at pp. 5-6)

6. Had Complainant exercised due diligence and sought to substitute Thomas Maxwell for William Maxwell at the outset of the case, Respondents would not incurred substantial legal costs, which have prejudiced them.

7. Moreover, Complainant subsequently conducted no discovery to support its story that William Maxwell was the owner and operator of the facility.

8. Upon completion of the discovery schedule on November 15, 2016, Respondents asked and received leave to file a motion for summary judgment with respect to William Maxwell prior to setting the matter for hearing. (Hrg Officer Order of Jan. 23, 2017)

9. While Complainant did not object to the Hearing Officer scheduling, once the motion for summary judgment was filed, Complainant reconsidered and asked for discovery to be reopened. Again, the Complainant’s course of conduct prejudiced Respondents in that the reason that they waited until the close of discovery to file the motion was to avoid the additional cost and challenges of new or additional evidence being produced in the middle of motion practice.

10. Complainant successfully sought leave for the opportunity to depose “William Maxwell and Tom Maxwell regarding their respective roles and actions in the Six M. Corporation and operation of the Walker Service Station are necessary to fill in crucial gaps in the current record needed for Complainant to respond to, and for the Board to properly adjudicate, Respondent's Motion for Summary Judgment.” (Complainant’s Motion for Leave to Reopen Discovery, at p. 2 (March 15, 2017))

11. While Respondents respectfully maintain that the Board should not have exercised its discretion to reopen discovery, Respondents believe that permission was granted with the expectation that the depositions would allow for a more efficient administration of the case going forward, an expectation, if true, Complainant has now shown to be misplaced.

12. Tom Maxwell was deposed June 9, 2017. William Maxwell was not deposed, presumably because William Maxwell had been diagnosed with late onset Alzheimer's related dementia and suffers from memory loss. (Resp. to Mot. S.J., Attach A, at pp. 7-8)

13. Thereafter, Complainant responded to the motion for summary judgment, arguing that the “only evidence” supporting the motion is the affidavit of Thomas Maxwell that it precedes to denounce as unreliable. (Resp. To Mot. S.J., at p. 2) Complainant further argued that “[i]f that evidence alone were probative of liability or lack of liability in this case, the sole respondent would be Thomas Maxwell . . .” (Id. at p. 12)

14. The Board agreed with the Complainant and denied the motion for summary judgment on the grounds that a question is raised as to whether William Maxwell is “individually liable as the owner of the Walker Service Station.” (Order of Board, at p. 5 (Sept. 7, 2018))

15. Subsequently, there has been no discovery or motion practice before the Board

until William Maxwell died. There are no allegations in the motion for leave to amend of newly discovery evidence. Instead, the matter was prepared to be set for hearing. (Order of Hearing Officer (Sept. 27, 2017))

16. Certainly, the Board has discretion to allow a pleading to be amended. However, such discretion in no way obligates the Board to exercise it, and it is up to any movant to submit evidence, argument and authority in favor of any motion.

17. This motion is untimely. The only evidence alluded to is the 2011 affidavit of Thomas Maxwell, though it artfully ascribes the 2017 date when it was resubmitted. Why was this motion not filed in 2011? Why wasn't it filed in 2016 at the close of discovery, or in 2017 after depositions were conducted?

18. This motion lacks credibility. It ignores Complainant's previous pleadings, motions and arguments to the Board. Complainant argued to the Board that the 2011 affidavit was the "only evidence," but it was not credible. The Complainant clearly lacks evidence to support its case.

19. The motion improperly seeks to mend the hold. The amended complaint, not only adds a new party, but adds new theories, new paragraphs and new counts. There is no justification given for doing that, and it would certainly prejudice Respondents to have to engage in motion practice or answer a new pleading.

20. The motion improperly characterizes adding Thomas Maxwell as inconsequential. Individual liability is a separate issue from the liability of Six-M Corporation.

21. Thomas Maxwell was not not given notice and the opportunity for a meeting with the Illinois EPA as required by 415 ILCS 5/31. See Complaint, ¶ 3.

22. Respondents would be prejudiced by an inordinate amount of legal costs incurred seeking to dismiss William Maxwell and for the State to use his death as an excuse to enlarge and change the case on the eve of hearing.

WHEREFORE, Respondents, SIX M. CORPORATION, INC. and WILLIAM MAXWELL, pray for an order dismissing William Maxwell from the Case and denying Complainant's Motion for Leave to File First Amended Complaint.

Respectfully submitted by

SIX M. CORPORATION, INC. and WILLIAM  
MAXWELL, respondents,

BY: LAW OFFICE OF PATRICK D. SHAW

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THIS FILING IS SUBMITTED ON RECYCLED PAPER